IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1253 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHIKHABHAI B SOLANKI

Versus

SPORTS AUTHORITY OF INDIA

Appearance:

1. Special Civil Application No. 1253 of 1991

MR RK MISHRA for Petitioner No. 1

DS AFF.NOT FILED (R) for Respondent No. 1

MR MAYANK VORA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 19/02/2004

ORAL JUDGEMENT

#. Heard learned advocate Mr.R.K.Mishra appearing on behalf of the petitioner and learned advocate Mr.Mayank

Vora for respondents - Sports Authority of India.

#. The facts giving rise to the filing of the present petition are as under :

According to the petitioner, he had joined the service of the respondents on 8th January, 1990 on consolidated salary of Rs.270/- for the said month. For the months of February, March, April and May, 1990 he was paid a consolidated amount of Rs.450/- and thereafter, for the June to August, 1990 he was in all paid Rs.665/and for the months of September to December, 1990 he was paid an amount of Rs.774/- per month. According to the petitioner, he worked with the respondent from 8th January, 1990 to 31st December, 1990 and in all he completed 358 days continuous service and his service has been terminated by the respondent without giving any opportunity to the petitioner and without any justification on behalf of the respondent. He also submitted that he was working as Mess Boy from 11.00 a.m. till 10.00 p.m. daily. According to the petitioner, after his termination, the respondent has employed new hands through the Contractor and new employees have been engaged in place of the petitioner as Mess Boy and therefore, the order of termination is illegal. According to the petitioner, he has completed 240 days continuous service as required under Section 25[B] of the I.D.Act, 1947, even though, Section 25-F has not been followed by the respondent and even Section 25-H of the Act has not been followed by the respondent. Therefore, on this ground also, the termination is bad. According to the petitioner, he was working in the permanent post and the nature of work is also permanent and therefore, just to accommodate the other candidates, service of the petitioner has been terminated in arbitrary manner. It is therefore, case of the petitioner that action of the respondent is not fair, just and proper and hence, the present petition is filed to set aside the termination order and to grant him benefit of reinstatement with all consequential benefits and benefit of permanency.

#. This petition has been opposed by the respondent No.2 inter alia raising various contentions. The first contention raised is that the respondent is the society working as an agent of the Government of India with the main object of promoting and developing sports activities for the promotion of sports and improvement of standards of sports in the country and keeping with the sports policy of the Government of India, to encourage research in sports including training programmes etc. According to the respondent, it has come into existence at

Gandhinagar only from 29th August, 1987 and main function of the respondent is to prepare and make available all the amenities for the development of sports in this complex and this preliminary process is still in the stage of infancy. The second contention raised by the respondents that the respondent society is not an industry within the meaning of Section 2[j] of the Industrial Disputes Act, 1947 and therefore, provisions of the said Act do not apply to the respondent and all the contentions raised by the petitioner have no relevance so far as the respondent is concerned. It is also contended that the petitioner has not raised an industrial dispute within the meaning of Section 2[k] of the I.D.Act and the petitioner having an alternative efficacious effective remedy to raise industrial dispute under Section 10 of the Industrial Disputes Act, 1947. It is also contended that during the intervening period, that is to say till the complex is full developed, it is necessary to employ the workmen as and when necessary by way of stop gap arrangements and with that intention, the petitioner was employed by the respondents as and when necessary. The preliminary work being of casual nature, the petitioner is daily wager and he was not absorbed on permanent or can claim any such status. The respondent has also relied upon amended definition of "Industry" which excludes education or training institutions, social services and sovereign functions of the Government. Development of sports has been from the Memorandum of the society, has been taken as one of the functions of the Central Government. The averments made in para-8 of the affidavit in reply filed by the respondent are relevant wherein it is stated that "it is however submitted that the petitioner was engaged as daily wager and it is also true that he was getting salary as stated in the petition. The petitioner was working as a daily wager performed his duty as a Mess Boy as and when required or assigned in any day of the month." According to the respondent, the petitioner has not been discriminated as alleged or otherwise. It is however stated that as per the Staff Inspection Unit, Ministry of Finance, Government of India, has declared surplus staff in mess running by the present respondent and at present there is no vacancy and therefore, the petitioner can not claim services before respondent. A circular of the Government of India is also annexed as Annexure-A to the reply. The last contention raised by the respondent that this is a writ petition under Article 226 of the Constitution of India and it involves disputed facts and therefoer, the present petition is required to be dismissed.

#. Annexure-A with the reply of Respondent is the

letter of Sports Authority of India, which reflects the staff pattern but it is not in repsect of the present petitioner. On the contrary, it shows that staff has been sanctioned and also indicates some guidelines as to how to fix the seniority, and certain guidelines in that regard have been prescribed. Page.16 is the statement showing the details of sanctioned strength and present strength and finally assessed / agreed strength SAI, Wester Center, Gandhinagar, wherein item No.4 is in respect of Bearer / Mess Boy and the scale provided is Rs.2550-3200 and the sanctioned strength is 32 and the present strength is 31 and the assessed / agreed strength is 20 in numbers. Against which, a Rejoinder is filed by the petitioner, interalia raising the same contentions raised by the petitioner earlier that his termination is in violation of Section 25-F and 25-H of the I.D.Act, 1947 and juniors to the petitioner have been retained and service of the petitioner is illegally terminated. The details to that effect given in para-3 and which shows that in all nine employees, their date of joining and present place of work is given. Looking to the date of joining of the petitioner in January, 1990, it transpires that these all nine employees are juniors to the petitioners. The details of aforesaid nine other employees junior to the petitioner as given by the petitioner in affidavit-in-rejoinder, is reproduced as under :

Sr.No.	Name	Date of joining	Present place of work
1.	Shri Ambalal S. Meena	1.6.90	Sector 15, Ladies Hostel, Gandhinagar
2.	Shri Kutty Christian	Since 1990	Transferred to another place [not known]
3.	Shri Mahendrasingh Sarsar	Since 1990	Serving at another Center
4.	Shri Khadagasingh [Punjabi]	Since 1990	Serving at another center
5.	Shri Hagaji Thakor	Since 1990	Left services voluntarily
6.	Shri Bhimbhai [Bhangi]	7.12.90	He was employed as Mess Boy w.e.f. 31.12.90 in place

of petitioner and
presently serving
at another center

7. Shri Pravin Makwana 7.12.90 Waiter & serving
at Gao Center

8. Shri Dinesh M.Shrimali 31.12.90 Swimming Pool,
Gandhinagar.

9. Shri Mukesh P.Shrimali Since Sector No.15
1990 Gandhinagar as
Watchman.

#. According to the petitioner, these nine employees are working at present with the respondents. It is also case of the petitioner that even in 2002, one Kashirambhai and another Shri Dashrathbhai have been employed by the respondents in the Mess of respondent authority at Gandhinagar. Therefore, according to the petitioner, juniors remained continued in service and even in the year 2002, two new daily wagers have been appointed and therefore also, termination of the petitioner is hit by Articles 14 & 16 of the Constitution of India. The petitioner has placed much emphasis and reliance on the document on page.16 of the rejoinder. The petitioner has also emphasised that right to life guaranted under Article 21, also includes right to livelihood and further contended that he remained unemployed and not gainfully employed from the year 1991 and therefore prayed for grant of reinstatement with continuity of service and backwages of the interim period. It is relevant to note that no counter to the affidavit-in-rejoinder has been filed by the respondent denying the contents of the Rejoinder and therefore, in absence of the counter against the rejoinder, the facts placed on record, remains uncontroverted.

#. I have considered the pleadings narrated above and so also the submissions made by the learned advocates for the parties in support of their pleadings made before this Court. It is relevant to appreciate that it is undisputed fact between the parties that the petitioner was engaged as Mess Boy on 8th January, 1990 remained in service upto 31st December, 1990 and during the period completed 358 actual working days and his service has been terminated without following due procedure of law. It is also undisputed between the parties that the requirement under Section 25[F],[G] and [H] of the

industrial Disputes Act, 1947 have not been followed. As such, no prior notice has been served on the petitioner before terminating his service and even no opportunity of any kind, nor any reasonable opportunity has been given to the petitioner and it is not even the case of the respondent before this Court. The respondents have mainly raised two contentions before this Court. The first contention is that the respondent is not an industry within the meaning of Section 2[j] of the I.D.Act, 1947. As such, no details about the activities given by the respondent that on that what ground, they are not covered under the definition of an industry under Section 2[j] of the I.D.Act, 1947. A bare perusal of the averments made in the reply, it is obvious that systematic activity is going on with the respondent and there prevailed a relationship of employer and employee between the parties to the petition. On this aspect, the Apex Court has examined issue in detail in case of BANGALORE WATER SUPPLY AND SEWERAGE BOARD V. A.RAJAPPA AND OTHERS reported in AIR 1978 SC 548. The relevant discussion on the issue where broadly concept has been given by the Apex Court in the said decision which is referred to as under :

> "Industry" as defined in S.2[j] has a wide import.
>
> Where there is [i] systematic activity, [ii] organized by co-operating between the employer and employee [the direct and substantial element is chimercial], [iii] for the production and / or distribution of goods and services calculated to satisfy human wants and wishes [not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale, prasad or food], prima facie, there is an "industry" in that enterprise.
>
> Absence of profit motive or gainful object is irrelevant, be the venture in the public, joint, private or other sector.
>
> The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
>
> If the organisation is a trade or business it does not cease to be one because of philanthropy animateing the undertaking."

The Apex Court, in the very decision, even on the

consideration whether Sports Club, is an industry within the meaning of Section 2[j] of the I.D.Act, 1947 has made the following observations in para-137 to 147, which are quoted for reference :

"137. Clubs : Are clubs industries ?

The wide words used in Sec. Clubs : Are clubs industries ? The wide words used in Sec. 2(J) if applied without rational limitations, may cover every bilateral activity even spiritual, religious, domestic, conjugal, pleasurable or political. But functional circumscriptions spring from the subject-matter and other cognate. considerations already set out early in this judgment. Industrial law, any law, may insanely run amok if limitless lexical liberality were to inflate expressions into bursting point or proliferate odd judicial arrows which at random sent, hits many an irrelevant mark the legislative archer never meant. To read down words to yield relevant sense is a pragmatic art, if care is taken to eschew subjective projections masked as judicial processes. The true test as we apprehend from the economic history and functional philosophy of the Act is based on the pathology of industrial friction and explosion impeding community production and consumption and imperiling peace and welfare. This social pathology arises from the exploitative potential latent in organized employer-employee relations. So, where the dichotomy of employer and workmen in the process of material production is present, the service of economic friction and need for conflict resolution show up. The Act is meant to obviate such conformation and 'industry' cannot functionally and defunctionally exceed this object. The question is whether in a club situation-or of a co-operative or even a monastery situation, for that matter a dispute potential of the nature suggested exists. If it does, it is an industry, since the basic elements are satisfied. If productive cooperation between employer and employee is necessary, conflict between them is on the cards, be it a social club, mutual benefit society, pinjarapole, public service or professional office. Tested on this touchstone, most clubs will fail to qualify for exemption. For clubs gentlemen clubs proprietary clubs service clubs investment clubs, sports clubs, art clubs military clubs or other brands

of recreational associations- when x-rayed from the industrial angle project a picture on the screen typical of employers hirings employees for wages for rendering services and/or supplying goods on a systematic basis at specified hours. There is a co-operation the club management providing the capital, the raw materialthe appliances and auxiliaries and the cooks, waiters, bell boys, pickers bar maids or other servants making available enjoyable eats, pleasures and other permissible services for price paid by way of subscriptions or bills charged. The club life' the warm company, the enrichment of the spirits and freshening of the mind are there But these blessings do not contradict the co-existence of an 'industry' in the technical sense. Even tea-tasters, hired for high wages, or commercial art troupes or games teams remunerated fantastically, enjoy company, taste, travel and games; but, elementally, they are workmen with employers above and together constitute not merely entertainment groups but industries under the Act. The protean hues of human organization project delightfully different designs depending upon the legal prism and the filtering process used. No one can value of club life; neither can anyone blink at the legal result of the organization.

138. The only ground to extricate clubs from the coils of industrial law (except specific statutory provision) is absence of employer employee co-operation on the- familiar luring-firing pattern. Before we explain this possible exemption and it applies to many clubs at the poorer levels of society we must meet another submission made by counsel. Clubs are exclusive; they cater to needs and pleasures of members, not of the community as such and this latter feature salvages them from the clutches of industrial regulation. We do not agree, Clubs are open to the public for membership subject to their own bye-laws and rules. But any member of the community complying with those conditions and waiting for his turn has reasonable chance of membership. Even the world's summit club-the United Nations has cosmic membership subject to vetoes, qualifications, voting and what not. What we mean is that a club is not a limited partnership but formed from the community. Moreover, even the most exclusive clubs of

imperial vintage and class snobbery admit members' guests who are not specific souls but come from the unrefused community or part of a community. Clubs speaking generally are social institutions enlivening community life and are the fresh breath of relaxation in a fadedsociety. They serve a section and answer the doubtful test of serving the community. They are industry.

139. We have adverted to a possible category of clubs and associations which may swim out of the industrial pool-we mean self serving clubs, societies or groups or associations. Less fashionable but more numerous in a poor, populous, culturally hungry country with democratic urges and youthful vigour is this species. Lest there should be a rush by the clubs we have considered and dismissed to get into this proletarian brood if we may so describe them to identify, not at all to be pejorative,-we must elucidate.

140. It is a common phenomenon in parts of our country that workers, harijans, student youth at the lower rung of the socioeconomic ladder weaker sections like women and lowincome, groups quench their cultural thirst by forming gregarious organisations mainly for recreation. A few books and magazines, a manuscript house magazine contributed by and circulated among members, a football or volley ball game in the evenings-not golf, billiards or other expensive games a music or drama group, an annual day, a competition and pretty little prizes and family get together and even organising occasional meetings inviting V.I.Ps.-these tiny yet luscent cultural balls dot our proletarian cheerlessness. And these hopeful organisms, if fostered, give a mass spread for our national awakening for those for whom no developmental bells yet toll.

141. Even these people's organs cannot be non-industries unless one strict condition is fulfilled. They should be-and usually are-self-serving. They are poor men's clubs without the wherewithal of a Gyankhana or C.C.I. which reacted this court for adjudication. Indeed, they rarely reach a court being easily priced out of our expensive judicial market. These self-service clubs do not have hired employees to cook or serve, to pick or chase

balls, to tie up nets or arrange the cards table, the billiards table, the bar and the bath or do those elaborate business management chores of the well-run city or country clubs. The members come and arrange things for themselves. The secretary, an elected member, keeps the key. Those interested in particular pursuits organise those terms themselves. Even the small accounts or clerical items are maintained by one member or other. On special evenings all contribute efforts to make a good show, excursion, joy picnic or anniversary celebration. The dynamic aspect is self-service. In such an institution, a part-time sweeper or scavenger or multi-purpose attendant may sometimes exit. He may be an employee. This marginal element does not transform a little association into an industry. We have projected an imprecise profile and there may be minor variations. The central thrust of our proposition is that if a club or other like collectivity has a basic and dominant self-service mechanism, a modicum of employees at the periphery will not metamorphose it into a conventional club whose verve and virtue are taken care of by paid staff, and the members' role is to enjoy. The small man's Nehru Club (Gandhi Granthasala, Anna Manram, Netaji Youth Centre, Brother Music Club, Muslim Sports Club and like organs often named after natural or provincial heroes and manned by members themselves as contrasted with +,he upper bracket's Gyamkhana Club, Cosmopolitan Club, Cricket Club of, India, 'National Sports Club of India whose badge is pleasure paid for and provided through skilled or semiskilled catering staff. We do not deal with hundred per cent social service clubs which meet once in a way, hire a whole evening in some hotel, have no regular staff and devote their energies and resources also to social service projects. There ire many brands and we need not deal with every one. Only if they answer the test laid down affirmatively they qualify.

142. The leading cases on the point are Gyamkhana and C.C.I. We must deal with them before we conclude on this topic.

143. The Madras Gymkhana Club, a blue-blooded, members' club has the socialite cream of the city on its rolls. It offers choice facilities for

golf, tennis and billiards, arranges dances, dinners and refreshments, entertains and accommodates guests and conducts tournaments for members and nonmembers. These are all activities richly charged with pleasurable service. For fulfillment of these objects the club employs officers, caterers, and others on reasonable salaries. Does this club become an industry ? The label matters little; the substance is the thing. A night club for priced nocturnal sex is a lascivious 'industry'. But a literary club, meeting weekly to read or discuss poetry, hiring a venue and running solely by the self-help of the participants, is not. Hidayatullah C.J., in Gymkhana ruled that the club was not an 'industry'. Reason ? 'An industry is thus said to involve cooperation between employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessarily- for profit.'

"It is not of any consequence that there is. no profit motive because that is considered immaterial. It is also true that the affairs of the club are organised in the way business is orgainsed, and that there is production of material and other services and in a limited way production of material goods mainly in the catering department. But these circumstances are not truly representative in the case of the club because the services are to the members themselves for their own pleasure and amusement and the material goods are for their consumption. In other words, the club exists for its members. No doubt occasionally strangers also benefit from its services, but they can only do so on invitation of members. No one outside the list of members has the advantage of these services as of right. Nor can these, privileges be bought. In fact they are available only to members or through members.

If today the club were to stop entry of outsiders, no essential change in its character vis-a-vis the members would take place. In other words, the circumstances that

guests are admitted is irrelevant to determine if the club is an industry. Even with the admission of guests being open the club remains the same, that is to say, a member's self-serving institution. No doubt the material needs or wants of a section of the community is catered for but that is not enough. This must be done as part of trade or business or as undertaking analogous to trade or business. This element is completely missing in a members' club'

144. Why is the, club not an industry ? It involves cooperation of employer and employees, organised like in a trade and calculated to, supply pleasurable utilities to members and others. The learned Judge agrees that 'the material needs or wants of. a section of the community is catered for but that is not enough. This must be done as part of trade or business or as an undertaking analogous to trade or business. This element is completely missing in a members' club.

145. 'This element'? What element makes it analogous to trade? Profit motive ? No, says the learned judge. Because it is a self serving institution ? Yes ? Not at all. For, if it is self-service then why the expensive establishment and staff with high salary bills ? It is plain as day-light that the club members do nothing to produce the goods or services. They are rendered by employees who work for wages. The members merely enjoy club life, the geniality of company and exhilarating camaraderie, to the accompaniment of dinners, dance, games and thrills. The 'reason' one may discover is that it is a members' club in the sense that 'the club belongs to members for the time being on its, list of members and that is what matters. Those members can deal with the club as they like. Therefore, the club is identified with its members at a given point of time. Thus, it cannot be said that the club has an existence apart from the members'.

146. We are intrigued by this reason. The ingredients necessary for an industry are present here and yet it is declared a non-industry because the club belongs to members only. A

> company belongs to the shareholders only; a co-operative belongs to the share members only; a firm of experts belongs to the partners only. And yet, if they employ workmen with whose co-oppration goods and services are made available to a section of the community and the operations are organised in the manner typical of business method and Organisation, the conclusion is irresistible that an 'industry' emerges. Likewise, the members of a club may own the institution and become the employers for that reason. It is transcendental logic to jettison the inference, of an 'industry' from such a factual situation on the ingenious plea that a club 'belongs to members for the time being and that is what matters'. We are inclined to think that that just does not matter. The Gymkhana case, we respectfully hold, is wrongly decided.

#. Considering the observations made by the Apex Court in aforesaid case of BANGALORE WATER SUPPLY AND SEWERAGE BOARD, in my opinion, the respondent Institution is an Industry within the meaning of Section 2[j] of the I.D.Act, 1947 and the Industrial Disputes Act is applicable to the respondents. However, it is useful to note that it is not case of the respondent that the respondent is performing sovereign function of the Central Government. The respondent has committed error to highlight amended definition given in the statute book of Section 2[j] of the I.D.Act but it is to be observed that said amendment is not still come into existence and force as the same has not yet been signed by the Hon'ble President of India. Therefore, amended definition cannot be looked into by this Court unless and until it come into existence by notification. Therefore, considering this aspect, when the Industrial Disputes Act is applicable and 358 days continuous service has been proved as per the averments made in para-8 of the reply of the respondent, and the fact that no notice under Section 25-F has been given and no retrenchment compensation has been paid to the petitioner by the respondent, in such case, the order becomes ab initio void. Section 25-F is mandatory provision, required to be followed by the respondent before terminating service of the petitioner, which is, not in fact, followed in the instant case by the respondent. Therefore, the view taken by the Apex Court in MOHAN LAL V. BHARAT ELECTRONICS reported in AIR 1981 SC 1253, such order of termination is ab initio void and no need to pass any order of reinstatement as it is declaratory relief to the effect that the workman must be deemed to be remain

continue in service if the order of termination is found to be violative of Section 25-F of the I.D.Act, 1947. The Apex Court further observed that "as precondition for a valid retrenchment has not been satisfied the termination of service is ab initio void, invalid and inoperative. He must, therefore, be deemed to be in continuous service."

#. The word "retrenchment" in Section 2[O] of the I.D.Act, 1947 has been interpreted by the Larger Bench of the Apex Court in reported decision 1990 [2] JT 489, where the retrenchment has been examined by the Apex Court and ultimately, the Apex Court having considered the entire law on the subject has come to the conclusion that any kind of termination not falling within four exceptions, amounts to retrenchment. Therefore, termination of the present petitioner, since does not fall, within four exceptions of the said Section, there is no doubt that it is retrenchment. As per the Rejoinder, juniors have remained continued in service. Names of nine employees have been given in the Rejoinder and thereafter also, two more persons have been subsequently engaged by the respondent. No counter to rejoinder has been filed by the respondent. Therefore, at the time of termination of service of the petitioner, juniors remained in service and as a result Section 25-G of the I.D.Act, 1947 has been violated and even thereafter also in 2002 two other employees have been engaged without calling the petitioner and therefore also, the right of the petitioner for re-employment under Section 25-H has also been violated. The respondent is Sports Authority of India which is an autonomous body and State Authority within the meaning of Article 12 of the Constitution of India. It is relevant to note that no such contention has been raised by the respondent that they are not State Authority within the meaning of Article 12 of the Constitution of India and therefore, Writ is maintainable. Moreover, looking to the admission made by the respondent in para-8, in my opinion, no disputed questions involved and therefore, there is no need to relegate the petitioner to avail an alternative remedy under the Industrial Disputes Act, 1947. It is pertinent to note that in the present petition, wherein Rule has been issued by this Court on 19th November, 1991. Even on that occasion, no such contention was raised by the respondent that the petitioner has an alternative remedy in challenging the termination order. Affidavit has been filed before this Court on 9th August, 2002. Once the matter has been admitted by this Court and RULE has been issued in the year 1991, then, after 12 years, this Court should not and shall not relegate the

petitioner for an alternative remedy. Such view has been taken by the Division Bench of this Court in a case between K.S.JOY V. I.I.M. reported in 1994 [1] G.L.R. 57, wherein this Court has held that once Rule has been issued by this Court and after four years, now to consider the contention of the respondent to avail an alternative remedy by the petitioner, cannot be examined and cannot be relegated the petitioner to avail an alternative remedy merely such an alternative remedy is available to the petitioner. In this case, the facts are more shocking and harsh and in the instant case, 12 years elapsed by now from the date of issuance of the Rule in the matter by this Court and therefore, at this stage, to relegate the petitioner to avail an alternative remedy to challenge the termination order before the labour court, would certainly amounts to causing great prejudice and injustice to the petitioner and such decision on the part of this Court would not be less than traversity of justice and therefore, contention raised on behalf of the respondent, is not worth accepting and the same is accordingly rejected.

#. It may also be appreciated one more fact that reflects from page.16 of the reply which suggests that in all 32 sanctioned posts of Bearer / Mess Boy and present strength is 31 in numbers. Therefore, it seems that despite of one clear vacancy of the post of Mess Boy with the respondent authority, unfortunately, the petitioner has been deprived for the reasons best known by the authority. It is also regrettable to note that the respondents have not maintained the seniority list of the Mess Boy / Bearer working with the respondents. It has not come on record from the ends of the respondents that from the date of termination of the petitioner, how many new Mess Boy are recruited and working with the respondent. As such, no details has been given in support of the contentions raised on behalf of the respondent. Therefore, in such circumstance and in absence of proper assistance at the ends of the respondents, this Court has to believe Rejoinder filed by the petitioner, which reflects names of nine employees who all are juniors to the petitioner and two persons are engaged as the daily wager even in the year 2002. It is useful to note that this fact remained unchallenged as no counter has been filed by the respondent. This Court has also taken into consideration of the Apex Court in case of CSIR SCIENTIFIC WORKERS ASSOCIATION AND ANOTHER V. UNION OF INDIA OTHERS reported [2003] 9 SCC 289 wherein the Apex Court considered the earlier decision of a larger Bench of the Apex Court consisting of seven learned Judges In Pradeep Kumar Biswas v. Indian

Institute of Chemical Biology reported in 2002(5) SCC 111. In the instant case, there is no doubt that no such contention has been raised by the respondent that they are not State Authority. However, looking to the recent decision of the larger Bench of the Apex Court, in my opinion, the respondent is an autonomous body totally controlled by the Central Government and therefore, the respondent can be said to be State Authority within the meaning of Article 12 of the Constitution of India.

##. In view of my aforesaid discussion, on all counts, in my opinion, the writ is maintainable against the respondent as the respondent is covered under the definition of Section 2[j] of the Industry and since termination is in violation of Section 25[F], [G], and [H] of the I.D.Act, 1947, therefore, the order of termination becomes ab initio void. Looking to the averments in Rejoinder filed by the petitioner that he has remained unemployed and not gainfully employed and the said averments remained unchallenged and therefore, according to my opinion, the petitioner is entitled to full backwages of the interim period with all consequential benefits.

##. In the result, present petition succeeds and the same is allowed with direction to the respondents to reinstate the petitioner with continuity of service and with full backwages of the interim period and other consequential benefits within period of three months from the date of receipt of copy of this judgement.

Rule is made absolute with no order as to costs.

Direct Service is permitted.

Date : 19.2.2004 [H.K.Rathod, J.]

#kailash#